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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 138.

HELEN RUSSELL PIERCE, Executrix of the Last Will and Testament of GEORGE WASHINGTON PIERCE, Deceased.
Petitioner.

vs.

ALLEN B. DUMONT LABORATORIES, INC.,
Respondent.

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

Your petitioner respectfully prays that this Honorable Court rehear and reconsider the merits of the petition for a writ of certiorari in the above cause.

Subsequent to this Court's denial of the petition, a further petition has been filed by Aeronautical Communications Equipment, Inc., for review of a recent September 6, 1962, Fifth Circuit decision in direct conflict with the Third

Circuit decision in the present cause as to precisely the same Pierce patent.[1]

There can *never be* a more clashing conflict of circuits than in this present case.

It will be recalled[2] that the Court of Appeals for the First Circuit had ruled that the Pierce patent was invalid for double patenting, but that the Court of Appeals for the Fifth Circuit

> "notwithstanding a decision of a court of a different circuit for which we have the highest respect",

disagreed with this holding and held that there was no double patenting. Thereafter, the Court of Appeals for the First Circuit, despite this holding by the Court of Appeals for the Fifth Circuit, adhered to its view that there was double patenting.

In the meantime, the Court of Appeals for the Third Circuit, in the light of the decisions of both the Court of Appeals for the First Circuit and the Court of Appeals for the Fifth Circuit, disagreed with both Courts of Appeals.

It refused to hold double patenting and it refused to hold that there was not double patenting, but held the Pierce patent invalid upon a new theory of *illegal extension of monopoly.*

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1. Petition No. 558, filed October 24, 1962, *Aeronautical Communications Equipment, Inc.*, v. *Helen Russell Pierce, Executrix*, No. 19422, U.S. Court of Appeals for the Fifth Circuit, decided September 6, 1962 (See Appendix A, or Appendix C of your present Petitioner's Supplemental Brief which, like Petitioner's Reply to Respondent's Supplemental Brief, was probably called to the attention of this Court after the decision not to grant the writ).

2. Petition, pp. 5-7.

Since the petition in this case was filed, the Court of Appeals for the Fifth Circuit was afforded an opportunity to reconsider its earlier decision in the light of the latest decisions of the Courts of Appeals for the First and Third Circuits. The Court of Appeals for the Fifth Circuit insisted, however (September 6, 1962), that there was no double patenting or illegal extension of monopoly.

In the October 24, 1962, petition for certiorari No. 558,[3] filed to review the September 6, 1962, decision of the Court of Appeals for the Fifth Circuit, the petitioner complains that the Pierce patent is now valid in one part of the United States and invalid in other parts. Your petitioner agrees. It is submitted that this Court should resolve this conflict since there is no other way in which that conflict can be resolved.

There are moreover, a number of civil actions still pending in various District Courts the prosecution of which has been held up pending a final decision as to whether the basic Pierce oscillator patent 2,133,642 is or is not valid or enforceable.

Your petitioner will be helpless to prosecute these civil actions and the various District Courts will be equally helpless unless guidance is obtained from the Supreme Court. It would save endless work for the District Courts, let alone the litigants, if they would be informed, by this Court, which of the four conflicting decisions of the three Courts of Appeals is correct.

There can *never* be a more far-reaching issue of patent law before this Court than the resolution of this "difficult

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3. Your petitioner is filing a detailed reply brief in the Fifth Circuit petition No. 558.

and doubtful"[4] ruling of so-called *unlawful extension of monopoly*; since the Patent Office, each week, is continuing to issue patents for elements and combinations of elements in *precisely the same order as Professor Pierce's patents*, and is thus spawning myriads of invalid patents, if the Third Circuit decision is permitted to stand!

In the words of the petitioner in the Fifth Circuit Aeronautical Communications Equipment, Inc.,

> The public, the courts and the Patent Office should be informed by this Court. . . .

thus removing

> This uncertainty . . . and . . . doubt as to the rights of the public under the Patent Laws . . .

A PLEA TO THE JUSTICES.

Out of about *1300* written decisions of this Court since the passage of the Patent Act of 1952, only *1* appears to bear upon the law of patents.

Your petitioner respectfully calls the attention of this Court to the fact that proprietary rights as well as personal liberties are deserving of the time of this Court.

It is, indeed, the *same Constitution* that protects the individual's personal liberties, that was intended to guarantee inventors, such as world-renowned Professor Pierce, the protection of their property rights in discoveries.

It is inconceivable that a more direct or confusing conflict of circuits or a more far-reaching issue of patent law

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4. The words of the Third Circuit Court of Appeals itself!

can possibly be submitted to this Court, so that reconsideration and granting of the writ appears in order.

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

It is hereby certified that the above petition for rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Rule 58 (2) of this Court.

ROBERT H. RINES.